

Jay M. Ross (State Bar No. 151750)
jross@hopkinscarley.com
Monique D. Jewett-Brewster (State Bar No. 217792)
mjb@hopkinscarley.com
HOPKINS & CARLEY
A Law Corporation
The Letitia Building
70 S First Street
San Jose, CA 95113-2406

mailing address:
P.O. Box 1469
San Jose, CA 95109-1469
Telephone: (408) 286-9800
Facsimile: (408) 998-4790

Attorneys for Plaintiff
Keith Tai Wong

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re
Michael E. Stone
Debtor.

Keith Tai Wong
Plaintiff

vs.

Michael E. Stone,
Defendant.

Case No. 18-50095-MEH

Chapter 7

AP Case No. 18-5014-MEH

**MOTION TO WITHDRAW AS COUNSEL
FOR PLAINTIFF; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Date: April 13, 2020

Time: 11:00 a.m.

Location: 280 South 1st Street
San Jose, CA 95113
Courtroom 11

Judge: Hon. M. Elaine Hammond

TO THE COURT, ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Civil L.R. 11-5 of the United States District Court for the Northern District of California, made applicable in this proceeding by B.L.R. 1001-2(a) of the United States Bankruptcy Court for the Northern District of California, and California

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1 Rule of Professional Conduct 3-700(C)(1), attorney Monique D. Jewett-Brewster, on behalf of
2 Hopkins & Carley, A Law Corporation, and all of its attorneys (“Hopkins & Carley”), moves this
3 Court for an order relieving Hopkins & Carley as counsel of record for plaintiff Keith Tai Wong
4 (“Plaintiff” or “Mr. Wong”). In accordance with Civil L.R. 11-5(a), Hopkins & Carley has
5 provided written notice of this motion reasonably in advance to Plaintiff and to all parties who
6 have appeared in the above-captioned adversary proceeding.

7 This motion is based on this motion and memorandum of points and authorities, the notice
8 of hearing and declaration of counsel filed concurrently herewith, and all other papers and
9 pleadings on file in the main case and this action.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Hopkins & Carley respectfully requests that the Court allow it to withdraw from
13 representing Plaintiff in the above-captioned matter. Good cause exists to permit the withdrawal of
14 counsel. Plaintiff and Hopkins & Carley have reached irreconcilable differences which have
15 made it impossible for the firm to continue to represent the client in this matter. Further, Hopkins
16 & Carley has taken reasonable steps to avoid reasonably foreseeable prejudice to Mr. Wong.
17 Consequently, the Court should enter an order permitting Hopkins & Carley to withdraw as
18 Plaintiff’s counsel in the above-captioned matter.

19 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

20 In this action, Plaintiff asserts one cause of action under 11 U.S.C. § 523 for non-
21 dischargeability of the fraud judgment that he obtained against Defendant Michael E. Stone in the
22 Santa Clara County Superior Court. Plaintiff asserts a second cause of action pursuant to 11 U.S.C.
23 § 727 objecting to Defendant’s discharge based on several alleged fraudulent acts and omissions.

24 Plaintiff filed his First Amended Complaint (the operative complaint) on April 16, 2018.
25 (Dkt. No. 5.) Defendant filed his Answer to the complaint on April 25, 2018. (Dkt. No. 6.) The
26 Court held a status conference on June 24, 2019. Later that same day, the Court entered its Pretrial
27 Conference Order and Trial Scheduling Order (Dkt. No. 26). Trial was set for February 12, 2020.
28 (*Id.*)

1 Plaintiff retained Hopkins & Carley as his new counsel of record in early January 2020.
2 (Declaration of Monique D. Jewett-Brewster ["Jewett-Brewster Decl."], ¶ 3.) After Mr. Wong
3 engaged Hopkins & Carley as his counsel in this matter, the parties stipulated to continue the trial
4 date and related pre-trial deadlines so that attorney Jewett-Brewster would have time to return to the
5 office after a surgery set for February 7, 2020, familiarize herself with the factual and legal issues
6 in this matter, and meet and confer with defendant Stone in an effort to resolve this matter
7 informally or narrow the issues for trial. (*Id.*, ¶ 4.) On January 23, 2020, the Court entered its
8 Order Approving Stipulation to Continue Trial Date and Amending Pre-Trial Deadlines ("Amended
9 Scheduling Order") (Dkt. No. 40). Among other important dates, the Amended Scheduling Order
10 continued the trial date in this matter to May 5, 2020 at 9:00 a.m. and continued several pre-trial
11 deadlines to early April 2020. (*Id.*)

12 **III. LEGAL ARGUMENT**

13 **A. Legal Standard for Withdrawal as Counsel of Record by Motion**

14 Withdrawal of counsel by motion is governed in part by Rule 3-700(C) of the California
15 Rules of Professional Conduct. That Rule provides in part:

16 [A] member may not request permission to withdraw in matters pending before a tribunal,
17 and may not withdraw in other matters, unless such request or such withdrawal is because:

18 (1) The client...

19 (d) by other conduct renders it unreasonably difficult for the member to carry out
the employment effectively,....

20 Cal. R. Prof. Conduct 3-700(C).

21 Pursuant to Civil L.R. 11-5 of the United States District Court for the Northern District of
22 California, made applicable in this matter by B.L.R. 1001-2(a), counsel may not withdraw from
23 an action until relieved by order of Court after written notice has been given reasonably in
24 advance to the client and to all other parties who have appeared in the case. Civ. L.R. 11-5(a).
25 The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the
26 trial court. *Irwin v. Mascott*, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. Dec. 1, 2004), citing
27 *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir. 1982).
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